

STATEMENT OF  
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DEPUTY ASSISTANT SECRETARY FOR POLICY  
AND INTERNATIONAL AFFAIRS  
BEFORE THE  
HOUSE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT  
REGARDING GALAXY AIRLINES  
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Mr. Chairman and Members of the Subcommittee:

The Department is pleased to have this opportunity to describe the procedures that are followed in issuing operating authority to air carriers. We have officials from the Office of the Secretary and from the Federal Aviation Administration to answer specific questions you may have on the process by which we issue certificates of public convenience and necessity and air carrier (safety) operating certificates. We will also be happy to respond to questions on the Galaxy Airlines case, in particular.

First, however, we would like to explain how certificates of public convenience and necessity are issued now and how they were issued by the Civil Aeronautics Board prior to that agency's sunset on December 31, 1984. We would also like to explain the continuing fitness requirements and how we handle cases in which continuing fitness is the issue. Later, the FAA will describe its procedures for obtaining an operating certificate.

Under section 401 of the Federal Aviation Act, anyone proposing to conduct air transportation operations as an air carrier must first obtain a certificate of public convenience and necessity. In order to obtain such a certificate, an applicant must be a citizen of the United States and must be found "fit, willing, and able" to conduct the services proposed. The CAB established a three-part test, which the Department has now adopted, for determining the "fitness" of a company to operate as a certificated air carrier. The three areas of inquiry are: (1) whether the applicant will have the managerial skills and technical ability to conduct the proposed operations; (2) whether it has a reasonable operating proposal supported by a credible financing plan that, if carried out, will generate sufficient resources to commence operations without undue risk to consumers; and (3) whether it is likely to comply with the Federal Aviation Act and regulations imposed by Federal and State agencies.

In reviewing the first area--managerial and technical ability--we do what the CAB did. We attempt to determine whether the applicant has a well-balanced group of managers that have aviation and/or business experience that would prepare them to conduct the type of operation it is proposing. For example, we ask: does the applicant have a President or Chief Executive Officer that has prior aviation or business management experience that would enable him or her to direct the operations of this company? Do the Chief Pilot and Director of Maintenance have the necessary technical background and FAA licenses to operate or maintain the type of aircraft or service being proposed? Is the management team complete or are there gaps that must be filled?

In the financial area, we review the applicant's service proposal by looking at: where it is planning to operate, the type of service it intends to conduct (for example, scheduled, charter, passenger, cargo), and the aircraft it proposes to use. The applicant must also provide information on its projected costs and revenues for this service. We then compare these projections to the actual experience of operating air carriers providing similar service to determine whether they appear reasonable. If they do, we analyze whether the applicant has a financial proposal which would support the operating plan. For example, if the applicant is not internally financed, where will it get its money: from a bank or other financial institution, public or private stock offering, or from some other source? In any of these cases, the question we ask is: does the applicant appear to have a credible financial plan that, if carried out, will generate sufficient funds to conduct the proposed operations without undue risk to its customers.

The third and final area that we review has become known as "compliance disposition." We ask the applicant to tell us whether any of its key personnel have been involved in any enforcement actions or litigation with the FAA, CAB, State or local agencies, including problems involving antitrust matters, deceptive business practices, fraud, or other consumer matters. If the applicant is an operating carrier, or if its principals were owners of other operating carriers, it must provide us with information on its own and these other carriers' accident histories. If accidents did occur, the applicant must tell us the cause of the accident and what steps it took to ensure that a similar occurrence would not take place in the future. We check with the FAA and the National Transportation Safety Board to verify any information the applicant has given us on its past safety record. We also ask the FAA whether

the applicant has applied for the necessary safety certificate, the status of that application, and whether the FAA, based on its review of the applicant, knows of any reason why we should not find it fit. Our Investigation Division also checks with the Securities and Exchange Commission and our own consumer and enforcement files for any violations involving the applicant or its key personnel.

Once we determine that an application is complete and the applicant appears to be fit, we issue an order in which we tentatively find the applicant fit but invite interested persons to "show cause" why we should not issue a final determination to that effect. If no answers are received, we will issue a final order finding the applicant fit and award it the requested certificate. If there are objections, we review the information submitted before making our final decision. If the applicant has not already received the required operating certificate from the FAA, we will impose a condition that states that the certificate of public convenience and necessity will not become effective until after we have received from the FAA a copy of the applicant's air carrier operating certificate.

In those cases where there are substantial questions about a carrier's fitness to operate, we will set the case for hearing before an administrative law judge. This is an area where we have departed to some extent from the CAB's handling of these cases. It was the Board's policy to set for hearing virtually all cases for initial certification involving new, non-operating applicants or carriers proposing jet operations for the first time, regardless of whether there were any controversial issues or questions of fitness

involved. To relieve applicants of the burden of having to participate in a hearing, the Department proposes to set only those cases for hearing where substantial or controversial questions of material fact are raised that can best be resolved in an oral evidentiary proceeding. We believe this will speed decisions in non-controversial cases and save resources, both the industry's and our own.

If a hearing is held, witnesses are presented and cross-examined, briefs are filed, and the Judge issues a recommended decision. The Department then reviews the Judge's recommendation and issues a final decision on the application, either finding the applicant fit or unfit.

Once an applicant has been found fit and awarded a certificate, it is subject, under section 401(r) of the Act, to a continuing fitness requirement. That section empowers the Department, as it did the CAB, to suspend, modify, or revoke the certificate of a carrier if we find that the carrier no longer remains fit. We may, for example, initiate a continuing fitness review if a carrier makes substantial changes in its management team, or if the FAA grounds a carrier because of numerous safety problems, or if we get a large number of consumer complaints about a carrier not making refunds or cancelling a large number of flights. Depending on the circumstances, this may result in instituting a formal or informal investigation into the carrier's continuing fitness to operate, with the ultimate result that we may revoke its operating authority. We would do so when there is compelling evidence of a need for regulatory intervention.

There is also a provision in our current rules, adopted by the CAB in February 1983, which requires a carrier that has not operated in at least two years to undergo a new fitness review prior to commencing service. In adopting this requirement, it was the Board's view that a carrier that had not operated for two years or longer after being found fit most likely would have personnel, financial backing, operating proposals, and, perhaps, compliance histories different from those present when the original authority was sought. It is those differences that we re-examine to ensure that the carrier remains fit.

Since the fitness program was transferred to the Department in January, we have committed ourselves to ensuring its successful operation and to protect the public against potentially unfit or unscrupulous air carriers. Since the beginning of the year, we have certificated 18 carriers, denied one application, revoked 24 certificates, and started informal continuing fitness reviews, including two-year reviews, of 11 carriers. We have also established a task force of OST and FAA personnel to more closely coordinate the air carrier licensing authorities within the Department and to ensure the prompt notification to each other of any signs of deterioration in a carrier's operations that may impact on safety or fitness. This task force meets on a regular basis to discuss policy, as well as specific air carrier, problems.

This completes our formal statement. I would like to introduce three members of our staff who are available for questions on the fitness program, as well as on the Galaxy Airlines certification. They are:

Mr. John V. Coleman, Director of the Department's Office of Essential Air Service, formerly CAB's Director of the Bureau of Domestic Aviation.

Mr. Joseph A. Hamilton, Chief of the Department's Investigation Division, and Chief of the same division at the CAB.

Mrs. Patricia T. Szrom, Chief of the Department's Special Authorities Division, the same position she held at the CAB.